



FAQs on employee leave in response to COVID-19 OUTBREAK

On March 18, 2020, the **Families First Coronavirus Response Act (FFCRA)** was signed into law. It includes two different but related provisions for employee leave. One provision provides for paid sick leave, and the other provides for an additional reason to take leave under the Family and Medical Leave Act (FMLA).

GENERAL

QUESTION: WHAT DOES THE FFCRA PROVIDE IN REGARD TO EMPLOYEE LEAVE?

ANSWER: The FFCRA includes two provisions (Acts) regarding employee leave. "Paid sick leave" means paid leave under the Emergency Paid Sick Leave Act. "Expanded family and medical leave" means paid leave under the Emergency Family and Medical Leave Expansion Act. The two provisions (Acts) are intertwined.

QUESTION: WHICH EMPLOYERS ARE SUBJECT TO THE NEW EMPLOYEE LEAVE PROVISIONS UNDER THE FFCRA?

ANSWER: For the expanded family and medical leave employers with fewer than 500 employees (total in the U.S.) and public employers with one or more employees are covered. Employers with fewer than 50 employees may be exempt if the requirements would jeopardize the viability of the business as a going concern. Healthcare provider and emergency responder employees are also exempt.

QUESTION: HOW DO WE COUNT EMPLOYEES FOR THE 500 THRESHOLD?

ANSWER: You have fewer than 500 employees if, at the time your employee's leave is to be taken, you employ fewer than 500 full-time and part-time employees within the U.S., which includes any state of the U.S., the District of Columbia, or any Territory or possession of the U.S.

QUESTION: SO, IF I AM A PRIVATE SECTOR EMPLOYER AND HAVE 500 OR MORE EMPLOYEES, DO THE EMPLOYEE LEAVE PROVISIONS APPLY TO ME?

ANSWER: No. Private sector employers are only required to comply with the employee leave provisions if they have fewer than 500 employees. Generally, employers with 500+ employees already have employee leave provisions.

QUESTION: WHICH EMPLOYEES ARE ELIGIBLE FOR THE NEW EXPANDED FAMILY AND MEDICAL LEAVE?

ANSWER: All employees are eligible for the paid sick leave provisions. They need not meet any hours, days, or months worked criteria. Employees who have worked for their employer for at least 30 calendar days are eligible for the expanded family and medical leave.

QUESTION: HOW DO I KNOW WHETHER AN EMPLOYEE HAS BEEN EMPLOYED FOR AT LEAST 30 CALENDAR DAYS FOR PURPOSES OF EXPANDED FAMILY AND MEDICAL LEAVE?

ANSWER: Employees are considered to have been employed by you for at least 30 calendar days if you had them on your payroll for the 30 calendar days immediately prior to the day the leave would begin. For example, if an employee wants to take leave on April 1, 2020, he or she would need to have been on your payroll as of March 2, 2020.

If an employee has been working for you as a temporary employee, and you subsequently hire the employee on a full-time basis, you are to count any days the employee previously worked as a temporary employee toward this 30-day eligibility period.

QUESTION: WHEN WILL THE NEW LEAVE PROVISIONS BEGIN?

ANSWER: The expanded family and medical leave provisions are effective from April 1, to December 31, 2020.

QUESTION: HOW CAN WE COMPLY IN SUCH A SHORT TIMEFRAME?

ANSWER: The DOL will not bring enforcement actions against you for violations of the FFCRA occurring through April 17, 2020, provided that you have made reasonable, good faith efforts to comply with the Act. For purposes of this non-enforcement position, you act “reasonably” and “in good faith” when all of the following facts are present:

- You remedy any violations, including by making all affected employees whole as soon as practicable. This program is designed to ensure that all covered employers have access to sufficient resources to pay required sick leave and family leave wages.
- The violations of the Act were not “willful,” meaning you either knew or showed reckless disregard for the matter of whether your conduct was prohibited.
- The DOL receives a written commitment from you to comply with the FFCRA in the future.

The DOL may enforce the law if you

- Violate the FFCRA willfully,
- Fail to provide a written commitment to future compliance with the FFCRA, or
- Fail to remedy the violation upon notification by DOL, the employee seeking payment, or a representative of that employee, including by making all affected employees whole as soon as practicable.

After April 17, 2020, this limited stay of enforcement will be lifted, and the DOL will fully enforce violations of the FFCRA.

QUESTION: IF AN EMPLOYEE TAKES LEAVE FOR QUALIFYING REASONS UNDER THE FFCRA BEFORE APRIL 1, MAY WE COUNT IT AS FFCRA LEAVE?

ANSWER: No, the FFCRA is not retroactive. Any leave taken before the law is effective on April 1 will not be counted as FFCRA leave.

QUESTION: WHAT IF I HAVE FEWER THAN 50 EMPLOYEES AND PROVIDING CHILDCARE-RELATED PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE WOULD JEOPARDIZE THE VIABILITY OF MY BUSINESS AS A GOING CONCERN?

ANSWER: You may take advantage of the small business exemption. To elect this exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the DOL, which will be addressed in more detail in forthcoming regulations.

QUESTION: DO I NEED TO SEND ANYTHING TO THE DOL FOR THIS EXEMPTION?

ANSWER: No, you should not send any materials to the DOL when seeking a small business exemption for paid sick leave and expanded family and medical leave.

QUESTION: WILL THE DOL PROVIDE RELATED REGULATIONS?

ANSWER: Regulations are expected in April.

REASONS FOR LEAVE

QUESTION: FOR WHAT REASONS MAY AN EMPLOYEE TAKE THE EXPANDED FAMILY AND MEDICAL LEAVE?

ANSWER: Under the FFCRA, employees may take paid sick leave if they are unable to work or telework due to the following reasons:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to a quarantine or isolation order or has been advised to self-quarantine.
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Under the FFCRA, employees also qualify for expanded family leave if they are caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19.

QUESTION: IF AN EMPLOYEE IS SELF-QUARANTINED, WITH NO ORDER OR ADVICE TO DO SO, WOULD THE EMPLOYEE BE ENTITLED TO FMLA LEAVE?

ANSWER: No, as long as the employee does not have a serious health condition. Leave taken by an employee for the purpose of avoiding exposure to the flu would not be protected under the FMLA or the FFCRA. Leave taken under advice or an order to isolate or quarantine would qualify.

QUESTION: WHEN IS AN EMPLOYEE ABLE TO TELEWORK UNDER THE FFCRA?

ANSWER: Employees may telework when their employer permits or allows them to perform work while they are at home or at a location other than their normal workplace. Telework is work for which normal wages must be paid and is not compensated under the paid leave provisions of the FFCRA.

QUESTION: WHAT DOES IT MEAN TO BE UNABLE TO WORK, INCLUDING TELEWORK FOR COVID-19 RELATED REASONS?

ANSWER: Employees are unable to work if you have work for them and one of the COVID-19 qualifying reasons set forth in the FFCRA prevents them from being able to perform that work, either under normal circumstances at the normal worksite or by means of telework.

If you and an employee agree that the employee will work your normal number of hours, but outside of your normally scheduled hours (for instance early in the morning or late at night), then the employee is able to work and leave is not necessary unless a COVID-19 qualifying reason prevents the employee from working that schedule.

QUESTION: IF EMPLOYEES BECOMES UNABLE TO TELEWORK, ARE THEY ENTITLED TO PAID SICK LEAVE OR EXPANDED FAMILY AND MEDICAL LEAVE?

ANSWER: If you permits teleworking—for example, allows employees to perform certain tasks or work a certain number of hours from home or at a location other than their normal workplace—and the employees are unable to perform those tasks or work the required hours because of one of the qualifying reasons for paid sick leave, then the employees are entitled to take paid sick leave.

Similarly, if employees are unable to perform those teleworking tasks or work the required teleworking hours because they need to care for their child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, then the employees are entitled to take expanded family and medical leave. Of course, to the extent employees are able to telework while caring for your child, paid sick leave and expanded family and medical leave is not available.

LENGTH OF LEAVE

QUESTION: HOW LONG IS THE LEAVE?

ANSWER: For reasons other than caring for a child due to school/daycare closure or unavailability, a full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

If the leave is because the employee is caring for a child because the child's school or place of care has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions, a full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

QUESTION: MAY EMPLOYEES TAKE 80 HOURS OF PAID SICK LEAVE FOR SELF-QUARANTINE AND THEN ANOTHER AMOUNT OF PAID SICK LEAVE FOR ANOTHER REASON PROVIDED UNDER THE EMERGENCY PAID SICK LEAVE ACT?

ANSWER: No. Employees may take up to two weeks — or 10 days — (80 hours for full-time employees; for part-time employees, the number of hours equal to the average number of hours that they work over a typical two-week period) of paid sick leave for any combination of qualifying reasons. However, the total number of hours for which employees receive paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.

INTERMITTENT LEAVE

QUESTION: MAY EMPLOYEES TAKE PAID SICK LEAVE OR EXPANDED FAMILY AND MEDICAL LEAVE INTERMITTENTLY WHILE TELEWORKING?

ANSWER: Yes, if you allow it and if employees are unable to telework their normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act. In that situation, you and the employee may agree that the employee may take paid sick leave intermittently while teleworking. Similarly, if employees are prevented from teleworking their normal schedule of hours because they need to care for their child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you and the employees may agree that they can take expanded family medical leave intermittently while teleworking.

Employees may take intermittent leave in any increment, provided you and the employees agree. If, for example, if you agree on a 90-minute increment, the employee could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.

You are encouraged to collaborate with employees to achieve flexibility and meet mutual needs; some voluntary arrangements could combine telework and intermittent leave.

QUESTION: MAY EMPLOYEES TAKE PAID SICK LEAVE INTERMITTENTLY WHILE WORKING AT THEIR USUAL WORKSITE (AS OPPOSED TO TELEWORKING)?

ANSWER: It depends on why the employee is taking paid sick leave and whether you agree to the intermittent leave. Unless employees are teleworking, paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments. It cannot be taken intermittently if the leave is being taken because:

- The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- The employee is caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Unless employees are teleworking, once they begin taking paid sick leave for one or more of these qualifying reasons, they must continue to take paid sick leave each day until they either:

- Use the full amount of paid sick leave or
- No longer have a qualifying reason for taking paid sick leave.

This limit is imposed because if they are sick or possibly sick with COVID-19 or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep them from spreading the virus to others.

If they no longer have a qualifying reason for taking paid sick leave before they exhaust their paid sick leave, they may take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs.

In contrast, if you and your employees agree, the employees may take paid sick leave intermittently if they are taking paid sick leave to care for their child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons. If, for example, an employee's child is at home because his or her school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, the employee may take paid sick leave on Mondays, Wednesdays, and Fridays to care for the child, but work at the normal worksite on Tuesdays and Thursdays.

Flexibility is key. You may, for example, agree to allow intermittent leave on less than a full workday for employees taking paid sick leave to care for their child whose school or place of care is closed, or childcare provider is unavailable.

QUESTION: MAY EMPLOYEES TAKE EXPANDED FAMILY AND MEDICAL LEAVE INTERMITTENTLY WHILE THEIR CHILD'S SCHOOL OR PLACE OF CARE IS CLOSED, OR CHILDCARE PROVIDER IS UNAVAILABLE, DUE TO COVID-19 RELATED REASONS, IF THE EMPLOYEES ARE NOT TELEWORKING?

ANSWER: Yes, but only with your permission. Intermittent expanded family and medical leave should be permitted only when you agree upon such a schedule. If, for example, you agree, employees may take expanded family and medical leave on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursdays, while their child is at home because the child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, for the duration of the leave.

DOCUMENTATION

QUESTION: IS THERE A NEW ELIGIBILITY NOTICE REGARDING THIS NEW LEAVE REASON?

ANSWER: Currently, the DOL has not provided a new model eligibility/rights & responsibilities notice. Employers may use the current one and notate that the reason for leave qualifies under the FFCRA and that the employee eligibility is working for 30 days.

QUESTION: WHAT DOCUMENTS MAY I REQUEST FROM EMPLOYEES TO GET PAID SICK LEAVE OR EXPANDED FAMILY AND MEDICAL LEAVE?

ANSWER: You may request documentation in support of the reasons for the paid sick leave. These documents may include a copy of the federal, state or local quarantine or isolation order related to COVID-19 or written documentation by a health care provider advising the employee to self-quarantine due to concerns related to COVID-19.

You may also request documentation in support of expanded family and medical leave taken to care for a child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19-related reasons. For example, this requirement may be satisfied with a notice of closure or unavailability from a child's school, place of care, or child care provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to the employee from an employee or official of the school, place of care, or child care provider. You must retain this notice or documentation in support of expanded family and medical leave, including while the employee may be taking unpaid leave that runs concurrently with paid sick leave if taken for the same reason.

Please also note that all existing certification requirements under the original FMLA remain in effect if an employee is taking leave for one of the existing qualifying reasons under the FMLA. For example, if an employee is taking leave beyond the two weeks of emergency paid sick leave because a medical condition for COVID-19-related reasons rises to the level of a serious health condition, the employee must continue to provide medical certifications under the FMLA if required by you. Many healthcare facilities, however, may be too busy to provide medical certifications.

QUESTION: IS THERE A NEW POSTER REGARDING THIS NEW LEAVE?

ANSWER: Yes, covered employers must post in a conspicuous place on its premises an FFCRA notice.

COMPANY CLOSURES, FURLOUGHS

QUESTION: IF WE CLOSED A WORKSITE ON OR AFTER APRIL 1, 2020 (THE EFFECTIVE DATE OF THE FFCRA), BUT BEFORE EMPLOYEES WENT OUT ON LEAVE, CAN EMPLOYEES STILL GET PAID SICK LEAVE AND/OR EXPANDED FAMILY AND MEDICAL LEAVE?

ANSWER: No. If you close after the FFCRA's effective date (even if employees requested leave prior to the closure), employees will not get paid sick leave or expanded family and medical leave, but they may be eligible for unemployment insurance benefits. This is true whether you closed for lack of business or because you were required to close pursuant to a federal, state or local directive. Employees should contact their state workforce agency or state unemployment insurance office for specific questions about their unemployment eligibility.

QUESTION: IF THE WORKSITE CLOSED APRIL 1, 2020 (THE EFFECTIVE DATE OF THE FFCRA), CAN EMPLOYEES STILL GET PAID SICK LEAVE OR EXPANDED FAMILY AND MEDICAL LEAVE?

ANSWER: No. If, prior to the FFCRA's effective date, you sent employees home and stopped paying them because it did not have work for employees to do, employees will not get paid sick leave or expanded family and medical leave, but they may be eligible for unemployment insurance benefits. This is true whether you closed your worksite for lack of business or because it was required to close pursuant to a federal, state, or local directive. Employees should contact their state workforce agency or state unemployment insurance office for specific questions about your eligibility. For additional information, you may refer employees to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

It should be noted, however, that if you are paying employees pursuant to a paid leave policy or state or local requirements, employees will not be eligible for unemployment insurance.

QUESTION: WHAT HAPPENS IF WE CLOSE OUR WORKSITE WHILE EMPLOYEES ARE ON PAID SICK LEAVE OR EXPANDED FAMILY AND MEDICAL LEAVE?

ANSWER: If you close while employees are on paid sick leave or expanded family and medical leave, you must pay for any paid sick leave or expanded family and medical leave employees used before the closure. As of the date you closed the worksite, employees are no longer entitled to paid sick leave or expanded family and medical leave, but they may be eligible for unemployment insurance benefits. This is true whether you closed the worksite for lack of business or because you were required to close pursuant to a federal, state or local directive. Employees should contact their state workforce agency or state unemployment insurance office for specific questions about their eligibility for unemployment benefits.

QUESTION: IF WE ARE OPEN, BUT FURLOUGH EMPLOYEES ON OR AFTER APRIL 1, 2020 (THE EFFECTIVE DATE OF THE FFCRA), CAN EMPLOYEES RECEIVE PAID SICK LEAVE OR EXPANDED FAMILY AND MEDICAL LEAVE?

ANSWER: No. If you furlough employees because you do not have enough work or business for them, the employees are not entitled to then take paid sick leave or expanded family and medical leave. However, employees may be eligible for unemployment insurance benefits.

QUESTION: IF WE CLOSE A WORKSITE ON OR AFTER APRIL 1, 2020 (THE EFFECTIVE DATE OF THE FFCRA), BUT TELL EMPLOYEES THAT IT WILL REOPEN AT SOME TIME IN THE FUTURE, CAN EMPLOYEES RECEIVE PAID SICK LEAVE OR EXPANDED FAMILY AND MEDICAL LEAVE?

ANSWER: No, not while the worksite is closed. If you close a worksite, even for a short period of time, employees are not entitled to take paid sick leave or expanded family and medical leave. However, they may be eligible for unemployment insurance benefits. This is true whether you close a worksite for lack of business or because you were required to close pursuant to a federal, state, or local directive. If you reopen and employees resume work, they would then be eligible for paid sick leave or expanded family and medical leave as warranted.

QUESTION: IF WE REDUCE EMPLOYEE'S SCHEDULED WORK HOURS, CAN THEY USE PAID SICK LEAVE OR EXPANDED FAMILY AND MEDICAL LEAVE FOR THE HOURS THAT THEY ARE NO LONGER SCHEDULED TO WORK?

ANSWER: No. If you reduce work hours because you do not have work for employees to perform, employees may not use paid sick leave or expanded family and medical leave for the hours that they are no longer scheduled to work. This is because they are not prevented from working those hours due to a COVID-19 qualifying reason, even if their reduction in hours was somehow related to COVID-19.

Employees may, however, take paid sick leave or expanded family and medical leave if a COVID-19 qualifying reason prevents them from working their full schedule. If they do, the amount of leave to which they are entitled is computed based on their work schedule before it was reduced.

PAID LEAVE

QUESTION: IF EMPLOYEES ARE HOME WITH CHILDREN BECAUSE OF SCHOOL OR DAYCARE IS CLOSED OR UNAVAILABLE, DO EMPLOYEES GET PAID SICK LEAVE, EXPANDED FAMILY AND MEDICAL LEAVE, OR BOTH — HOW DO THEY INTERACT?

ANSWER: Employees in such situations may be eligible for both types of leave, but only for a total of 12 weeks of paid leave. Employees may take both paid sick leave and expanded family and medical leave to care for your child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons. The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This period thus covers the first 10 workdays of expanded family and medical leave, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless the employee elects to use existing vacation, personal, or medical or sick leave under your policy. After the first 10 workdays have elapsed, employees will receive 2/3 of their regular rate of pay for the hours they would have been scheduled to work in the subsequent 10 weeks under the Emergency and Family Medical Leave Expansion Act.

Employees may receive the additional 10 weeks of expanded family and medical leave only under the Emergency Family and Medical Leave Expansion Act for leave to care for a child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons.

QUESTION: IS ALL LEAVE UNDER THE FMLA NOW PAID LEAVE?

ANSWER: No. The only type of family and medical leave that is paid leave is expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act when such leave exceeds ten days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons.

QUESTION: HOW MUCH MUST WE PAY EMPLOYEES DURING THE LEAVE?

ANSWER: For leave reasons 1, 2, or 3, (orders or advised to quarantine/isolate, or employee has symptoms and is seeking diagnosis) employees taking leave must be paid at either their regular rate of pay or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

For leave reasons 4 (caring for an individual) or 6 (employee has any other condition), employees taking leave must be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

For leave reason 5 (school/daycare unavailability), employees taking leave must be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period — two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).

QUESTION: WHEN CALCULATING PAY DUE TO EMPLOYEES, MUST OVERTIME HOURS BE INCLUDED?

ANSWER: Yes. The Emergency Family and Medical Leave Expansion Act requires you to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week.

The Emergency Paid Sick Leave Act, however, requires that paid sick leave be paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80.

If the employee's schedule varies from week to week, the calculation of hours for a full-time employee with a varying schedule is the same as that for a part-time employee.

Please keep in mind the daily and aggregate caps placed on any pay for paid sick leave and expanded family and medical leave.

Please note that pay does not need to include a premium for overtime hours under either the Emergency Paid Sick Leave Act or the Emergency Family and Medical Leave Expansion Act.

QUESTION: WHAT IS THE REGULAR RATE OF PAY FOR PURPOSES OF THE FFCRA?

ANSWER: For purposes of the FFCRA, the regular rate of pay used to calculate your paid leave is the average of the employee's regular rate over a period of up to six months prior to the date on which the employee takes leave.

If the employee has not worked for you for six months, the regular rate used to calculate the paid leave is the average of the employee's regular rate of pay for each week the employee has worked for you.

If the employee is paid with commissions, tips, or piece rates, incorporate these wages into the above calculation.

You can also compute this amount for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.

QUESTION: IF EMPLOYEES ELECT TO TAKE PAID SICK LEAVE OR EXPANDED FAMILY AND MEDICAL LEAVE, MUST WE CONTINUE THEIR HEALTH COVERAGE? IF EMPLOYEES REMAIN ON LEAVE BEYOND THE MAXIMUM PERIOD OF EXPANDED FAMILY AND MEDICAL LEAVE, DO THEY HAVE A RIGHT TO KEEP MY HEALTH COVERAGE?

ANSWER: If you provide group health coverage, employees are entitled to continued group health coverage during their expanded family and medical leave on the same terms as if they continued to work. If they are enrolled in family coverage, you must maintain coverage during their expanded family and medical leave. Employees generally must continue to make any normal contributions to the cost of their health coverage.

If employees do not return to work at the end of their expanded family and medical leave, your plan will determine whether they are eligible to keep their health coverage on the same terms (including contribution rates). If they are no longer eligible, they may be able to continue coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA).

If employees elect to take paid sick leave, you must continue your health coverage. Under the Health Insurance Portability and Accountability Act (HIPAA), you may not establish a rule for eligibility or set any individual's premium or contribution rate based on whether an individual is actively at work (including whether an individual is continuously employed), unless absence from work due to any health factor (such as being absent from work on sick leave) is treated, for purposes of the plan or health insurance coverage, as being actively at work.

QUESTION: MAY EMPLOYEES COLLECT UNEMPLOYMENT INSURANCE BENEFITS FOR TIME IN WHICH THEY RECEIVE PAY FOR PAID SICK LEAVE AND/OR EXPANDED FAMILY AND MEDICAL LEAVE?

ANSWER: No. If you provide paid sick leave or expanded family and medical leave, employees are not eligible for unemployment insurance. However, each state has its own unique set of rules; states have additional flexibility to extend partial unemployment benefits to workers whose hours or pay have been reduced.

USE OF ACCRUED PAID TIME OFF

QUESTION: MAY WE REQUIRE EMPLOYEES TO USE ACCRUED VACATION LEAVE, PERSONAL LEAVE, OR MEDICAL OR SICK LEAVE FOR THE FIRST TWO WEEKS OF PARTIAL PAID LEAVE?

ANSWER: No, you may not mandate that employees use such accrued paid time off, but employees have the right to do so.

QUESTION: MAY EMPLOYEES USE THEIR PREEXISTING LEAVE ENTITLEMENTS AND FFCRA PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE CONCURRENTLY FOR THE SAME HOURS?

ANSWER: No. If employees are eligible to take paid sick leave or expanded family and medical leave under the FFCRA, as well as paid leave provided by your company, unless you agree, employees must choose one type of leave to take. Employees may not simultaneously take both, unless you agree to allow them to supplement the amount they receive from paid sick leave or expanded family and medical leave under the FFCRA, up to their normal earnings, with preexisting leave. If, for example, an employee is receiving 2/3 of his normal earnings from paid sick leave or expanded family and medical leave under the FFCRA and you permit, the employee may use his preexisting employer-provided paid leave to get the additional 1/3 of his normal earnings so that he receives his full normal earnings for each hour.

QUESTION: MAY I SUPPLEMENT OR ADJUST THE PAY MANDATED UNDER THE FFCRA WITH PAID LEAVE THAT AN EMPLOYEE MAY HAVE UNDER OUR PAID LEAVE POLICY?

ANSWER: If your employee chooses to use existing leave you have provided, yes; otherwise, no. Paid sick leave and expanded family medical leave under the FFCRA is in addition to employees' preexisting leave entitlements. Under the FFCRA, the employee may choose to use existing paid vacation, personal, medical, or sick leave from your paid leave policy to supplement the amount your employee receives from paid sick leave or expanded family and medical leave, up to the employee's normal earnings.

However, you are not required to permit an employee to use existing paid leave to supplement the amount your employee receives from paid sick leave or expanded family and medical leave. Further, you may not claim, and will not receive tax credit, for such supplemental amounts.

QUESTION: MAY WE REQUIRE AN EMPLOYEE TO SUPPLEMENT OR ADJUST THE PAY MANDATED UNDER THE FFCRA WITH PAID LEAVE THAT THE EMPLOYEE MAY HAVE UNDER MY PAID LEAVE POLICY?

ANSWER: No. Under the FFCRA, only the employee may decide whether to use existing paid vacation, personal, medical, or sick leave from your paid leave policy to supplement the amount your employee receives from paid sick leave or expanded family and medical leave. The employee would have to agree to use existing paid leave under your paid leave policy to supplement or adjust the paid leave under the FFCRA.

TAX CREDITS

QUESTION: HOW ARE EMPLOYERS TO HANDLE THE COST OF THE PAID LEAVE?

ANSWER: Every dollar of required paid leave (plus the cost of the employer's health insurance premiums during leave) will be 100% covered by a dollar-for-dollar refundable tax credit available to the employer.

QUESTION: MAY WE RECEIVE A TAX CREDIT FOR PAID SICK LEAVE WE ARE REQUIRED TO PROVIDE UNDER THE FFCRA?

ANSWER: Yes. For an employee who is unable to work because of Coronavirus quarantine or self-quarantine or has Coronavirus symptoms and is seeking a medical diagnosis, eligible employers may receive a refundable sick leave credit for sick leave at the employee's regular rate of pay, up to \$511 per day and \$5,110 in the aggregate, for a total of 10 days.

For an employee who is caring for someone with Coronavirus, or is caring for a child because the child's school or child care facility is closed, or the child care provider is unavailable due to the Coronavirus, eligible employers may claim a credit for two-thirds of the employee's regular rate of pay, up to \$200 per day and \$2,000 in the aggregate, for up to 10 days. Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.

QUESTION: MAY WE RECEIVE A TAX CREDIT FOR PAID EMERGENCY FMLA LEAVE WE ARE REQUIRED TO PROVIDE UNDER THE FFCRA?

ANSWER: Yes, in addition to the sick leave credit, for an employee who is unable to work because of a need to care for a child whose school or child care facility is closed or whose child care provider is unavailable due to the Coronavirus, eligible employers may receive a refundable child care leave credit. This credit is equal to two-thirds of the employee's regular pay, capped at \$200 per day or \$10,000 in the aggregate. Up to 10 weeks of qualifying leave can be counted towards the childcare leave credit. Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.

QUESTION: HOW DO WE RECEIVE THE TAX CREDITS?

ANSWER: When you pay your employees, you are required to withhold from your employees' paychecks federal income taxes and the employees' share of Social Security and Medicare taxes. You then are required to deposit these federal taxes, along with your share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns (Form 941 series) with the IRS.

Eligible employers who pay qualifying sick or childcare leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and childcare leave that they paid, rather than deposit them with the IRS.

The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and your share of Social Security and Medicare taxes with respect to all employees.

If there are not sufficient payroll taxes to cover the cost of qualified sick and childcare leave paid, you will be able to file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less. Details are still forthcoming.

QUESTION: IF WE WANT TO PAY EMPLOYEES MORE THAN THEY ARE ENTITLED TO RECEIVE FOR PAID SICK LEAVE OR EXPANDED FAMILY AND MEDICAL LEAVE, CAN WE DO SO AND CLAIM A TAX CREDIT FOR THE ENTIRE AMOUNT PAID TO THEM?

ANSWER: You may pay your employees in excess of FFCRA requirements. But you cannot claim, and will not receive tax credit for, those amounts in excess of the FFCRA's statutory limits.

REGULAR FMLA

QUESTION: IF OUR COMPANY STOPPED OPERATION DUE TO THE OUTBREAK, HOW DO WE HANDLE AN EMPLOYEE'S FMLA LEAVE THAT WOULD OTHERWISE BE EXHAUSTED DURING OUR FURLOUGH?

ANSWER: When an employer's operations shut down and operations ceased and employees are not expected to report for work for one or more weeks, the days the employer's activities have ceased do not count against the employee's FMLA leave entitlement. Therefore, assuming the shutdown will last more than a week, you would not count that time as FMLA leave.

QUESTION: AN EMPLOYEE HAS BEEN ON INTERMITTENT LEAVE SINCE JANUARY. AND NOW SHE IS TAKEN OFF WORK DUE TO CORVID-19, CAN SHE TIE THIS TO HER PRIOR FMLA? HER PRIOR FMLA WAS DUE TO AN AUTO ACCIDENT.

ANSWER: The employee would be entitled to the new COVID-19-related reasons only if she needs time off for those qualifying reasons (quarantine/isolation, school/daycare closings, etc.). Otherwise, her leave due to the accident could continue. Again, much will depend upon all the specific facts involved.

REINSTATEMENT

QUESTION: DO WE NEED TO REINSTATE EMPLOYEES AFTER TAKING FMLA LEAVE FOR THE NEW REASON?

ANSWER: If you have fewer than 25 employees, you are not required to reinstate an employee, but you need to be able to show that the position no longer exists due to economic conditions or other changes in operating conditions that affect employment and are caused by the public emergency. You also need to make reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment. You are to try to contact the employee within 12 months if an equivalent position becomes available.

